

WEST YORKSHIRE PENSIONER PMAB DECISION PRECIS

An 83 year old former West Yorkshire police officer has recently won his appeal against the decision of the SMP to reduce him to a Band 1 injury award in accordance with Home Office Circular 46/2004.

The pensioner argued that:

- His medical condition had not changed since his retirement in 1973 and that the SMP did not conduct a proper medical assessment of his condition
- The Police Authority had not reviewed his degree of disablement at all since his retirement, some 36 years ago and this was not at suitable intervals as indicated in the Regulations.
- The Regulations do not mention reviews at any specific age.
- The Police Authority have failed to take proper notice of the cogent reasons put forward.

The Police Authority argued:

- The review had been conducted in accordance with the Regulations and current case law.
- The Regulations allow for a review at any age.
- Home Office circular 46/2004 has been followed and as penury does not exist the submitted cogent reasons were rightly rejected.
- The Police Authority considered he would no longer be earning so no job comparators were considered.
- There had been a change in his condition and in the job situation.

The Board determined they would need to consider:

- The functional capability of the Appellant
- What medical conditions lead to reduced functional capability.
- What types of work he could perform taking into account his functional capability and his training and occupational experience.
- Are there any cogent reasons why he should not be reduced to Band 1.
- Regulations and relevant case law particularly TURNER that indicates there must be a change, either in the medical condition, or new jobs, which the Appellant is capable of doing, which might have become available since the last review.

The Board concluded:

- In the absence of evidence to show that the qualifying condition has improved it is difficult to determine how the pension can be altered on this account.
- It is difficult to see how the Appellant could undertake even a part time job which would warrant a reduction to Band 1. He does not have the skills or experience, having not worked since 1978, to undertake employment, therefore it is difficult to see how there could have been a substantial change. At 83 therefore he would no longer be in the labour market even in the absence of his qualifying condition and it is doubtful he would be employed because of his age and his other medical conditions. He therefore has only a small or even no loss of earnings and in accordance with Home Office Guidance could be reduced to Band 1 unless cogent reasons apply.
- The Regulations require the Police Authority to review the degree of disablement at suitable intervals and the Board consider that a gap of 36

years would not be a suitable interval and would argue that that point in itself would be a cogent reason for not reducing the degree of disablement.

- After 36 years without a review the appellant could not reasonably be expected to re-plan his financial circumstances.
- The Board consider there has been no improvement in the qualifying injury and it appears manifestly unfair to review someone for the first time after 36 years, when the Appellant could reasonably expect his financial position to be stable.
- Finally the Board considered that the Home Office in formulating Guidance would not envisage a Police Authority carrying out a review after 36 years to be a suitable interval envisaged by the Regulations.

Decision

The Board unanimously agreed to uphold the Appeal and consider the degree of disablement should remain at Band 3.